

**UNITED STATES DISTRICT COURT OF THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**IN RE: DIGITEK PRODUCT LIABILITY
LITIGATION**

MDL NO. 1968

Case No.: 2:08-md-1968

Kathy McCornack, et al.
Plaintiffs,

Case No.: 2:09-cv-0671

vs.

Actavis Totowa, LLC, et al.
Defendants.

RELATED CASES

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS'
MOTION TO STIRKE PLEADINGS AND MOTIONS FILED IN EXCESS OF PAGE
LIMITATION (LOCAL RULE 7.1(a)(2))**

Pursuant to *Federal Rules of Civil Procedure*, Rule 12(f) and Local Rule Civ. P. 7.1(a)(2), Plaintiffs Kathy McCornack, Daniel McCornack, and Ralph McCornack (collectively “*McCornack Plaintiffs*”) bring this motion to strike all pleadings filed by defendants in support of the various pending motions in excess of the page limitations specified by Local Rule Civ. P. 7.1(a)(2). (See *Notice of Motion*).

The court has the explicit authority to deny any motion found in violation of Local Rule Civ 7.1(a)(2). That rule states:

Length. A memorandum of not more than 20 pages in length must accompany the following types of motions:... (13) summary judgment: ...

... If a movant deems appropriate, a memorandum of not more than 20 pages in length may accompany any other type of motion even if not required by this rule or the court. ...

Motions to exceed the page limitation are disfavored and will be denied absent a showing of good cause. Unless extraordinary circumstances exist, a motion to exceed the page limitation for a supporting memorandum of law, memorandum in response, and a memorandum in reply, must be tendered to the presiding judge at least 3 days in advance of filing the proposed oversized memorandum.

If a memorandum is not submitted as required by this rule or by the court, the motion will be denied without prejudice.

The court also has the authority to strike immaterial matter in any pleadings pursuant to FRCP, Rule 12(f). It is submitted that any pleading filed so substantially in excess of the Court's page limitations, without seeking leave of Court, falls within this purview.

The defense has tried to expand on the page limitation by filing a general background statement and then incorporating it by reference in each motion to essentially add 20 pages of fact distortion and argument to bolster its arguments in violation of the rules. In addition, Mylan defendants have filed still another "companion motion" brief.

It is respectfully requested the court either strike all such pleadings, as enumerated in the notice of motion filed herewith.

Respectfully Submitted:

Dated: August 24, 2011

/s/ Don Ernst
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